

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHANNON O. MURPHY ESQ. SR., dba
SHEETMETAL & ASSOCIATES,

Plaintiff,

v.

FARMERS INSURANCE COMPANY,

Defendant.

No. 2:20-cv-1456 KJM DB PS

ORDER

Plaintiff Shannon O. Murphy Sr. is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Pending before the court are plaintiff's complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1 & 2.) Therein, plaintiff complains about defendant's alleged breach of contract and fraud in connection with a refusal to reimburse plaintiff for the cost of a rental car.

The court is required to screen complaints brought by parties proceeding in forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Here, plaintiff's complaint is deficient. Accordingly, for the reasons stated below, plaintiff's complaint will be dismissed with leave to amend.

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I. Plaintiff's Application to Proceed In Forma Pauperis

Plaintiff's in forma pauperis application makes the financial showing required by 28 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma pauperis status does not complete the inquiry required by the statute. "A district court may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit." Minetti v. Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th Cir. 2014) ("the district court did not abuse its discretion by denying McGee's request to proceed IFP because it appears from the face of the amended complaint that McGee's action is frivolous or without merit"); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) ("It is the duty of the District Court to examine any application for leave to proceed in forma pauperis to determine whether the proposed proceeding has merit and if it appears that the proceeding is without merit, the court is bound to deny a motion seeking leave to proceed in forma pauperis.").

Moreover, the court must dismiss an in forma pauperis case at any time if the allegation of poverty is found to be untrue or if it is determined that the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a complaint as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

To state a claim on which relief may be granted, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as true the material allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v. Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245

(9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

The minimum requirements for a civil complaint in federal court are as follows:

A pleading which sets forth a claim for relief . . . shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . . , (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks.

Fed. R. Civ. P. 8(a).

II. Plaintiff's Complaint

Jurisdiction is a threshold inquiry that must precede the adjudication of any case before the district court. Morongo Band of Mission Indians v. Cal. State Bd. of Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988). Federal courts are courts of limited jurisdiction and may adjudicate only those cases authorized by federal law. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37 (1992). "Federal courts are presumed to lack jurisdiction, 'unless the contrary appears affirmatively from the record.'" Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 546 (1986)).

Lack of subject matter jurisdiction may be raised by the court at any time during the proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir. 1996). A federal court "ha[s] an independent obligation to address sua sponte whether [it] has subject-matter jurisdiction." Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the obligation of the district court "to be alert to jurisdictional requirements." Grupo Dataflux v. Atlas Global Group, L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at 1380.

The basic federal jurisdiction statutes are 28 U.S.C. §§ 1331 and 1332, which confer "federal question" and "diversity" jurisdiction, respectively. Federal jurisdiction may also be conferred by federal statutes regulating specific subject matter. "[T]he existence of federal

jurisdiction depends solely on the plaintiff's claims for relief and not on anticipated defenses to those claims." ARCO Envtl. Remediation, LLC v. Dep't of Health & Envtl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000).

District courts have diversity jurisdiction only over "all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs," and the action is between: "(1) citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state . . . as plaintiff and citizens of a State or of different States." 28 U.S.C. § 1332. "To demonstrate citizenship for diversity purposes a party must (a) be a citizen of the United States, and (b) be domiciled in a state of the United States." Lew v. Moss, 797 F.2d 747, 749 (9th Cir. 1986). "Diversity jurisdiction requires complete diversity between the parties—each defendant must be a citizen of a different state from each plaintiff." In re Digimarc Corp. Derivative Litigation, 549 F.3d 1223, 1234 (9th Cir. 2008).

Here, although the complaint invokes diversity jurisdiction, the complaint fails to allege the citizenship of each party. "Absent unusual circumstances, a party seeking to invoke diversity jurisdiction should be able to allege affirmatively the actual citizenship of the relevant parties." Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001).

Moreover, although the complaint seeks \$8,000,000 in damages, it appears that defendant's alleged wrongful conducts consists of a refusal to reimburse plaintiff \$120 for a rental car. (Compl. (ECF No. 1) at 3.) "The amount in controversy alleged by the proponent of federal jurisdiction—typically the plaintiff in the substantive dispute—controls so long as the claim is made in good faith." Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka, 599 F.3d 1102, 1106 (9th Cir. 2010). Here, it is not clear that plaintiff's \$8,000,000 claim was made in good faith.

Accordingly, plaintiff's complaint will be dismissed.

III. Leave to Amend

The undersigned has carefully considered whether plaintiff may amend the complaint to state a claim upon which relief can be granted and over which the court would have jurisdiction.

1 “Valid reasons for denying leave to amend include undue delay, bad faith, prejudice, and futility.”
2 California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir.
3 1988); see also Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293
4 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court does not have
5 to allow futile amendments).

6 However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff
7 may be dismissed “only where ‘it appears beyond doubt that the plaintiff can prove no set of facts
8 in support of his claim which would entitle him to relief.’” Franklin v. Murphy, 745 F.2d 1221,
9 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972)); see also Weilburg v.
10 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to
11 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be
12 cured by amendment.”) (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.
13 1988)).

14 Here, given the vague and conclusory nature of the complaint’s allegations, the
15 undersigned cannot yet say that it appears beyond doubt that leave to amend would be futile.
16 Plaintiff’s complaint will therefore be dismissed, and plaintiff will be granted leave to file an
17 amended complaint. Plaintiff is cautioned, however, that if plaintiff elects to file an amended
18 complaint “the tenet that a court must accept as true all of the allegations contained in a complaint
19 is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action,
20 supported by mere conclusory statements, do not suffice.” Ashcroft, 556 U.S. at 678. “While
21 legal conclusions can provide the complaint’s framework, they must be supported by factual
22 allegations.” Id. at 679. Those facts must be sufficient to push the claims “across the line from
23 conceivable to plausible[.]” Id. at 680 (quoting Twombly, 550 U.S. at 557).

24 Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an
25 amended complaint complete. Local Rule 220 requires that any amended complaint be complete
26 in itself without reference to prior pleadings. The amended complaint will supersede the original
27 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in an amended complaint,
28 just as if it were the initial complaint filed in the case, each defendant must be listed in the caption

1 and identified in the body of the complaint, and each claim and the involvement of each
2 defendant must be sufficiently alleged. Any amended complaint which plaintiff may elect to file
3 must also include concise but complete factual allegations describing the conduct and events
4 which underlie plaintiff's claims.

5 **CONCLUSION**

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. The complaint filed July 20, 2020 (ECF No. 1) is dismissed with leave to
8 amend.¹

9 2. Within twenty-eight days from the date of this order, an amended complaint shall be
10 filed that cures the defects noted in this order and complies with the Federal Rules of Civil
11 Procedure and the Local Rules of Practice.² The amended complaint must bear the case number
12 assigned to this action and must be titled "Amended Complaint."

13 3. Failure to comply with this order in a timely manner may result in a recommendation
14 that this action be dismissed.

15 DATED: October 28, 2020

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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26 ¹ Plaintiff need not file another application to proceed in forma pauperis at this time unless
27 plaintiff's financial condition has improved since the last such application was submitted.

28 ² Alternatively, if plaintiff no longer wishes to pursue this action plaintiff may file a notice of
voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.